SBCivil Writ Petition No.5887/2003

Harish Kumar & Ors.
Vs.
State of Rajasthan & Anr.

Date of Order :: 7th September, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.P.Choudhary, for the petitioners.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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In pursuant to the notification dated 28.7.2003 issued by the Director, Secondary Education, Bikaner, the petitioner submitted applications in prescribed proforma to be considered for appointment to the post of Physical Training Instructor Gr.III. The petitioners were placed in merit list prepared by the respondents, however, appointment was not accorded to them on the count that the certificate pertaining to participation in sports activities submitted by the petitioners were not counter signed from the Director, Secondary Education, Bikaner. Being aggrieved by the same this petition for writ is preferred.

It is contended by counsel for the petitioners that denial for appointment to the petitioners on the count of not getting certificates counter signed by the Director is illegal in view of circular dated 30.10.1998 issued by the Director, Secondary Education Rajasthan, Bikaner. By circular referred above all the Deputy Directors and District

Education Officers in State of Rajasthan are instructed not to refer the certificates for getting counter signed by the Directorate.

In reply to writ petition the respondents have stated that certificates submitted by the petitioners were received after verification subsequent to 11.9.2003 and then an interim order passed by Division Bench of this Court in the case of Ashish Saxena v. State & Ors., DBCivil Writ Petition No.5207/2003, was in operation restraining the Department of Education from giving appointments on the post of Instructor Physical Education. The relevant portion of the reply reads as under:-

> "That the averments contained in para 5 of the writ petition do not need any reply. However, it is submitted that the petitioners were not accorded appointment as their certificates were received after verification after 11.9.203 after the appointment was given to 32 candidates. However, since Jaipur Bench of this Hon'ble Court granted stay order on 8.9.2003 in D.B. Civil Writ Petition No.5207/2003 – Ashish Saxena v. State and ors.) pertaining to the alleged discrimination in awarding bonus marks, the petitioners could not be given appointment."

In reply to the writ petition only reason given by the respondents for not giving appointment to the petitioners is that on the day verified

certificates pertaining to the petitioners were received, the interim order passed by Division Bench of this Court was in operation. In an additional affidavit sworn-in by Smt. Papender Kaur, District Education Officer (Secondary), Sriganganagar, Officer-in-Charge of the case, it is stated that case of the petitioners is covered by judgment of Division Bench of this Court in the case of Ashish Saxena (supra) decided by Division Bench on 9.3.2004. A copy of the judgment referred above is also placed on record as Anx.R/1. I have gone through the entire judgment and that is having no application in present case. In the case of Ashish Saxena (supra) the controversy was with regard to alleged discrimination for non grant of bonus marks against sports certificates of the candidates who acquired qualification in Physical Education from the institution situated outside State of Rajasthan, that is not the issue in present matter.

Be that as it may, the only reason for denying appointments to the petitioners was that on the day the verified sports certificates of the petitioners were received an interim order passed by this Court in the case of Ashish Saxena (supra) was in operation restraining the Department of Education from giving appointments to the post of Physical Training Instructor. This Court has already disposed of writ petition of Shri Ashish Saxena, as such after disposal of that there was no hindrance in considering

candidature of the petitioners and giving them appointments to the post of Physical Training Instructor Gr.III if they find place in select list prepared in order of merit.

Accordingly, this petition for writ is allowed. The respondents are directed to consider the candidature of the petitioners for the purpose of appointment to the post of Physical Training Instructor Gr.III in pursuant to the notification dated 28.7.2003 by according bonus marks to them for sport certificates produced by them and verified by the respondent Department. In the event the petitioners stand in select list in order of their merit, the appointment be given to them from the date appointments are accorded to the persons less meritorious than the petitioner. The petitioners shall be entitled for getting all notional benefits from the date of their appointments if the same is accorded to them in terms above.

No order to cost.

(GOVIND MATHUR),J.

kkm/ps.